

**Corrected January 31, 2006**

**JAN 27 2006**

**+NOT FOR PUBLICATION**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GARY L. BUTTON,

Defendant-Appellant.

No. 05-30230

D.C. No. CR-01-00016-DWM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Submitted December 9, 2005\*\*

Seattle Washington

BEFORE: GOULD and BERZON, Circuit Judges, and SCHWARZER,\*\*\* Senior  
District Judge

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\*This disposition is not appropriate for publication and may not be cited to or by  
the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\*The panel unanimously finds this case suitable for decision without oral  
argument. Fed. R. App. P. 34(a)(2).

\*\*\*The Honorable William W Schwarzer, Senior United States District Judge for  
the Northern District of California, sitting by designation.

Gary L. Button (Button) appeals the revocation of his supervised release and imposition of a twelve-month sentence. Button argues that the district court erred by imposing imprisonment for his release-condition violation and that the resulting sentence was unreasonable. We affirm the district court's revocation decision and sentence.

"We review a district court's application of the supervised release statute de novo." *United States v. Ortuño-Higareda*, 421 F.3d 917, 922 (9th Cir. 2005) (citation omitted). Button's admission of possession of a controlled substance in violation of a release condition authorized mandatory revocation under 18 U.S.C. § 3583(g). In accordance with Application Note No. 6 to U.S.S.G. § 7B1.4 (2004), the district court considered the continuation of supervised release with additional drug treatment rather than the imposition of imprisonment. Ultimately, however, the court imposed a twelve-month sentence based upon Button's prior difficulties in complying with supervised release conditions. Since the policy statements in Chapter 7 of the Guidelines are not binding, *United States v. George*, 184 F.3d 1119, 1121-22 (9th Cir. 1999), the court did not err in choosing imprisonment under § 3583(g) rather than continued supervised release under Application Note No. 6.

Button's challenge under *United States v. Booker*, 543 U.S. 220 (2005), of the reasonableness of his twelve-month revocation sentence similarly lacks merit. Following *Booker*, we continue to review revocation sentences for abuse of discretion, not for unreasonableness. *See Ortuño-Higareda*, 421 F.3d at 922 (citation omitted). Section 3583(g), not the Sentencing Guidelines, governs Button's release revocation. The district court complied with § 3583(g)'s terms, applying the statute based upon Button's admission of a predicate violation and imposing a revocation sentence within the relevant statutory maximum. There was no abuse of discretion.

AFFIRMED.